

REMARKS

The Applicant respectfully requests entry of the above amendment and reconsideration in view of the amendment and the following remarks.

The status of the claims in the above-identified application is as follows. Claims 1-19 and 21 are canceled, claims 20 and 22-34 are pending, and claims 23-34 are withdrawn from consideration. Claims 35-62 were previously added. Claims 63 - 66 are hereby added. Thus, claims 20, 22 and 35-66 remain pending.

Claims 20,22 35-55, and 57-62 are rejected under 35 U.S.C. §103(a) as being unpatentable over the BOSCH marketing material submitted in an IDS dated June 25, 2002 in view of De Stoutz (U.S. Patent Number 3,934,042). Further, claim 56 is rejected under 35 U.S.C. §103(a) as being unpatentable over BOSCH in view of B. Poole (U.S. Patent Number 2,491,015). The Examiner alleges in the Office Action that the Bosch marketing material essentially discloses all of the features of independent claims 20 and 22 *except* for the step of filling the bottles with *aseptically sterilized* foodstuffs (emphasis added). The Examiner alleges that De Stoutz discloses the step and means for aseptically sterilizing the foodstuffs. Finally, the Examiner states that it would be obvious for one with ordinary skill in the art to modify BOSCH's methods and apparatus by having the steps and means as suggested by De Stoutz combined with BOSCH thereby equating with the cited claims.

The above stated rejections under 35 U.S.C. §103(a) are respectfully traversed in that the combination cited by the Examiner (i.e., Bosch with De Stoutz) does not anticipate the claims. The combination of BOSCH and De Stoutz does not teach, or suggest, all of the elements of the claims, as required under 35 U.S.C. §103(a) .

Respectfully, there is no disclosure, teaching, nor suggestion, of *aseptically sterilized foodstuffs* in De Stoutz, as the Examiner alleges. To the contrary, De Stoutz only discloses an apparatus and method for the *irradiative* treatment of *beverages* so as to sterilize or pasteurize the beverage (Col. 1 lines 5-10). Note well that the term "aseptic" in the present invention is clearly defined in the specification. "[T]he term 'aseptic' denotes the United States FDA level of aseptic," page 3, lines 12-13.

"For the aseptic packaging of food products, an aseptic filler must, for example, use and FDA (Food and Drug Administration) approved sterilant, meet FDA quality control standards, use a sterile tunnel or clean room, and must aseptically treat all packaging material," page 2, lines 18-24. The level and type of sterilization in De Stoutz and the present invention are clearly not synonymous, for nowhere in De Stoutz is the term "aseptic", as defined in the present invention, disclosed or suggested. Further, there is no mention of the United States FDA, or any other standards of sterilization, in De Stoutz. Further, it would not be obvious for one of ordinary skill in the art to be able to irradiate beverages so as to sterilize or pasteurize the *beverages* (i.e., as in De Stoutz) and to then reach the higher sterility standards of "aseptic" quality for all *foodstuffs*, as defined by the FDA, as in the present invention.

Further, the level of sterilization of foodstuffs (i.e., aseptic), in the present invention, is not a result effective variable. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). Clearly, reaching heretofore unattained levels of, *inter alia*, aseptically disinfecting bottles; disinfection rates (i.e., greater than 100 bottles per minute); and, aseptically filling bottles with aseptically sterilized foodstuffs together in combination goes beyond ordinary skill in the art. Unlike the *Boesch* case, the aforementioned levels reached in the present invention are beyond the ranges of the prior art. Neither is obtaining these new levels analogous to finding an optimum value within a known process, as was the case in applying the previously known Pauling's theory to metallurgical ratios in alloys in the *In re Boesch* case. Thus, it is clearly beyond ordinary skill in the art to reach *inter alia* the **aseptic** level of "aseptically sterilized foodstuffs", as recited in independent claims 20 and 22.

Clearly, the cited combination of art does not anticipate the claims, as amended. Applicant respectfully submits, therefore, that independent claims 20 and 22, and dependent claims 35 - 66, which depend therefrom, are in condition for allowance.

CONCLUSION

If the Examiner believes that anything further is necessary in order to place the application in better condition for allowance, the Examiner is requested to contact Applicant's undersigned representative at the telephone number listed below.

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